

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LUIS MENDOZA,

Plaintiff,

V.

JORDAN FOSTER
CONSTRUCTION, LLC,

Defendant.

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CIVIL ACTION NO. 21-cv-00267

DEFENDANT’S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to Title 28 U.S.C. §§ 1441 and 1446, Defendant Jordan Foster Construction, LLC (“Defendant” or “JFC”) hereby gives notice of removal of an action filed against it in the 243rd Judicial District Court, El Paso County, Texas, to the United States District Court for the Western District of Texas, El Paso Division.

In support of this removal, Defendant offers the following:

I. PROCEDURAL HISTORY

1. On August 30, 2021 Plaintiff Luis Mendoza filed *Plaintiff’s Original Petition and Jury Demand* styled “Luis Mendoza v. Jordan Foster Construction, LLC” in the 243rd Judicial District of Texas, El Paso County, Texas, which is numbered as 2021-DCV-3043 (“Plaintiff’s Petition”).

2. On September 14, 2021 a summons to answer Plaintiff’s Petition was issued by the District Clerk of El Paso County, Texas.

3. On September 27, 2021 Defendant was served with the Summons and Plaintiff’s Petition, which alleged violations of the Family and Medical Leave Act (“FMLA”).

4. On October 18, 2021 Defendant's Original Answer was filed in state court.

5. True and correct copies of the summons, pleadings and matters filed in state court as of the filing of this notice are compiled in Defendant's Appendix of State Court Filings attached hereto as Ex. 1.

6. This notice of removal is timely as it is filed within thirty days from September 27, 2021, which is the date when Defendant's registered agent received Plaintiff's Petition and summons via certified mail, return receipt.

7. Defendant concurrently filed a notice of removal in state court and served same on all parties as required by statute.

II. REMOVAL BASED ON FEDERAL QUESTION JURISDICTION

8. The basis for removal of this case is federal question jurisdiction. Plaintiff alleges Defendant violated the FMLA, 29 U.S.C. § 2601 et. seq. A lawsuit based on the FMLA raises a federal question for purposes of establishing subject matter jurisdiction in the district court. *Johnson v. Dal-Tile Corp.*, No. 3:03-CV-2376-H, 2003 U.S. Dist. LEXIS 20508, *2-3 (N.D. Tex. Nov. 14, 2003). Therefore, Plaintiff's claim may be pursued in federal court pursuant to the federal jurisdiction statutes. 28 U.S.C. § 1331.

9. Venue is proper in this district pursuant to 28 U.S.C. § 1441(a) because the state court where the suit is pending is located in this district and division.

10. Plaintiff demanded a jury in the state court action.

11. By removing this case, Defendant does not waive any objections it may have as to service, jurisdiction or venue, or any other defenses or objections it may have to Plaintiff's action. Defendant intends no admission of fact, law or liability by filing this notice or by

removing this case, and expressly reserves all claims, defenses, motions and/or pleas available to Defendant.

III. CONCLUSION

For the foregoing reasons, Defendant respectfully prays that this action be removed to this Court, accepted by the Court and placed on the Court's docket for further proceedings. Defendant further prays that upon final disposition, Plaintiff take nothing by his claims and that Defendant be awarded such other relief as the Court deems proper.

Respectfully submitted,

/s/ Scott A. Agthe

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing *Defendant's Notice of Removal* and *Defendant's Appendix of State Court Filings* attached hereto as Ex. 1 have been filed and served electronically through the CM/ECF systems via notice of electronic filing to the following counsel of record for Plaintiff on October 26, 2021:

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/s/ Scott A. Agthe

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